



POLICE DEPARTMENT

September 26, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Michael Gallow
Tax Registry No. 932681
28 Precinct
Disciplinary Case No. 85430/09

The above-named member of the Department appeared before me on August 9, 2011, charged with the following:

1. Said Police Officer Michael Gallow, assigned to the 28th Precinct, while off-duty, on or about June 5, 2009, in the vicinity of Randall Avenue and East Tremont Avenue, within the confines of the 45th Precinct, Bronx County, did intentionally place or attempt to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
NYS Penal Law Section 120.14(1) MENACING IN THE SECOND DEGREE

2. Said Police Officer Michael Gallow, assigned as indicated in Specification #1, while off-duty, on or about the date and location indicated in Specification #1, did possess any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS
NYS Penal Law Section 265.01(2) CRIMINAL POSSESSION OF A
WEAPON IN THE FOURTH DEGREE

3. Said Police Officer Michael Gallow, assigned as indicated in Specification #1, while off-duty, on or about the date and location indicated in Specification #1, did knowingly act in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old.

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P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS
NYS Penal Law Section 260.10(1) - ENDANGERING THE WELFARE OF A
CHILD

4. Said Police Officer Michael Gallow, assigned as indicated in Specification #1, while off-duty, on or about the date and location indicated in Specification #1, did intentionally place or attempt to place another person in fear of death, imminent serious physical injury or physical injury.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS
NYS Penal Law Section 120.15 - MENACING IN THE THIRD DEGREE

5. Said Police Officer Michael Gallow, assigned as indicated in Specification #1, while off-duty, on or about the date and location indicated in Specification #1, with intent to harass, annoy or alarm another person, did ~~strike~~, shove, kick or otherwise subject such other person to physical contact, or attempts or threatens to do the same.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS
NYS Penal Law Section 240.26(1) - HARASSMENT IN THE SECOND
DEGREE

The Department was represented by Mark Berger, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification Nos. 1, 2, 3 and 4. Specification No. 5 is dismissed.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Police Officer Anthony D. Jackson and Sergeant Curtis J. Crystal as witnesses. The Department also placed in evidence the transcript of Respondent's criminal trial held at the Bronx County Supreme Court on August 3, 2010 [Department's Exhibit (DX) 1]. This contains the testimony of Person A and Sergeant Douglass Maresca, both of whom did not appear at the current proceeding.

Police Officer Anthony D. Jackson

Jackson is assigned to the 45 Precinct. On June 5, 2009, at about 4:15 p.m., he received a radio run of "menacing with a firearm" in the vicinity of Randall and East Tremont Avenues. When he arrived there about two or three minutes later, he went over to a dark orange-colored Honda Fit where Person A's "small daughter" was seated in the car seat in the rear of the car and Person A was standing on the sidewalk at the window where the child was. Jackson observed that Person A was crying and seemed to be upset.

Person A told him that she had gotten into a verbal dispute with a man who pointed a firearm at her and her child. Jackson testified, "She [Person A] was basically crying and she kept stating that he pointed a gun at me, he pointed a gun at my kid, my child, and she started to say my daughter is going to be traumatized. She also went on to say that she lives in this neighborhood, now she has to worry about this going on in her neighborhood."

She told Jackson that she did not know the perpetrator. Jackson described the area where the incident occurred as a "pretty busy intersection."

Person A described the perpetrator to him as a black male, late-20s to early-30s in age, with a "low" haircut, and black hair. He did not remember a clothing description. Person A also told him the man was driving a silver or grayish-color Toyota Camry. She also provided a license number. She said that after the incident she pulled over while the man drove off.

On cross-examination, Jackson elaborated on the area where the incident occurred. He agreed it was a heavy traffic area and that it goes under the overpass of the Cross Bronx Expressway. Further on, Randall Avenue crosses the Throgs Neck Expressway. He agreed that East Tremont Avenue is a heavy commercial area with many stores.

Jackson agreed that there is more traffic volume on Friday. He agreed that Person A did not tell him if she was driving or pulled over when she got the license plate number. Jackson agreed that the streets that are around East Tremont Avenue, specifically Revere, Philip and Calhoun Avenues, are residential streets.

Sergeant Curtis J. Crystal

Crystal has been an investigator with the Manhattan North Investigations Unit for about five years. In June 2009, he was assigned a case involving Respondent. The case had been handled by the Bronx Investigations Unit (BXIU) and the Internal Affairs Bureau (IAB) before it was assigned to him.

The investigation involved a complaint of a woman, Person A, who alleged a road rage incident. At that time, a man, later identified as Respondent, allegedly pointed a firearm at her and her child while they were driving.

Reviewing the worksheets prepared before he received the case, he learned that Person A had given a statement to investigators on June 7, 2009. She had initially reported the incident in a 911 call (DX 2 and 2A, tape recording and transcript of call). He believed that she called 911 at about 1610 hours.

Crystal testified that Respondent, at the time of the incident, resided at [REDACTED] [REDACTED], about three to five blocks from the location of the incident reported by Person A. Person A had described the vehicle the man was driving as a Toyota Camry and supplied its license plate number. Crystal ascertained that Respondent, at the time of the incident, drove a Toyota Camry with the same license plate number.

Person A described the firearm that had been pointed at her as being black, block shape, with a "square type of slide on the top with a circular barrel sticking out." Crystal testified that on June 5, 2009, Respondent owned two weapons: a silver Smith & Wesson and a black Glock 26. He described the Glock 26 as, "a smaller version of the Glock 19; both are black, square blocking in shape, with essentially a very square topped slide and circular barrel sticking slightly out from the front."

Crystal explained that the responding officers did not make an arrest because the subject had left the scene. Those officers did prepare a report which was forwarded to the 45 Precinct Detective Squad. The detectives there discovered the license plate belonged to Respondent and determined that Respondent was a member of the service (MOS). As a

result, they forwarded the investigation to IAB, who, in turn, directed BXIU to interview Person A.

BXIU, Crystal testified, presented Person A with a photo array (DX 3) and she immediately identified Respondent. Crystal described the photo array as six head shots of black males in two rows of three. Respondent's picture was in the lower left, number four and it was circled. Crystal was not present for the photo identification, but Sergeant Douglass Maresca was.

Crystal noted that after Person A identified Respondent in the photo array, he was arrested. Crystal stated that the criminal charges went to trial and he observed the trial. At trial, Respondent denied any misconduct. The defense, he said, was the timeline of his day and that he would have been unable to be at the location at the time of the incident. Respondent, he said, testified that he signed out at 3:40 p.m. in uniform. This occurred at his command on Eighth Avenue and West 123 Street. That day, Respondent had been the vehicle operator for a sergeant assigned to the Critical Response Vehicle detail (CRV) in Manhattan.

Crystal explained that the CRV can be assigned either inside the command or to several commands. That day, it was assigned to several commands in Manhattan. Crystal further explained that CRV officers are not supposed to incur overtime, so officers are dismissed from the CRV assignment between 45 and 75 minutes before the end of tour. He did not know the specific assignment of the CRV that day but the furthest south it would go would be the east side of 44 Street in Manhattan. Crystal did not know where Respondent was when he was released from his CRV duties because there was no notation about that in Respondent's memo book.

Crystal testified that in his experience, the desk officer is not always able to see whether all uniformed MOS leave work at the exact time they sign out. This is because of all of the responsibilities a desk officer has. Crystal acknowledged that Respondent signed out of his command at 1540 hours. He stated that he could find no one at the command to confirm that that was when Respondent signed out. He did not check to see if there were cameras to confirm Respondent's sign out time.

On cross-examination, Crystal agreed that he used Department records to conduct his investigations and that if Respondent had signed out early, that would be misconduct. He agreed that Respondent had never in his career been investigated for signing out early and never received any kind of discipline for doing so.

Crystal agreed that officers do sign out early sometimes and that he has investigated officers for signing out early. He said, however, that the sign out for Respondent was not sequential. When asked by the Court if the signatures followed line by line without skipping any, Crystal explained that Respondent's sign out sheet was not a log, but the printed roll call for the command or patrol (Court Exhibit 1). Again, on questioning by the Court, Crystal stated that Respondent did not sign out in the command log nor was he required to. Crystal agreed that the sign out times are not sequential and the times do not follow each other consecutively.

Crystal testified that Sergeant Rosario was the desk officer that day. He agreed that Rosario would be in the best position to have any information at all about Respondent's sign out that day. He did not agree that the time frame was crucial to the case. Crystal agreed that he never interviewed Rosario, nor did he speak to the sergeant. Respondent was driving on the day of the incident to determine when she released

Respondent to return to his command. He agreed that he had the investigation for about a year. Crystal agreed that he had no evidence to dispute Respondent's claims about when he signed out and that he was in uniform when he signed out. He agreed that as far as the Department was concerned, Respondent signed out in uniform at 1540 hours at Eighth Avenue and West 123 Street.

Crystal agreed that the first license plate number that was run came back to a Mercedes. He could not recall if he ever checked to see what type of Mercedes it was or what color it was. He said he did not check the Mercedes because there was criminal investigation ongoing at the time. He stated that he came to the conclusion that the second license plate number that was run came back to Respondent and that that was more than a coincidence.

Crystal agreed that Person A had said that she had been ducking and not even looking at cars at that period of time. He agreed that he never thought to check out the car that came back the first time the license plate number was run.

As part of his function in monitoring the criminal trial, Crystal stated that he spoke to the assistant district attorney (ADA) after the verdict. The ADA told him that based on his conversation with the jurors they felt that there was some doubt.

Crystal agreed that the 911 call came in at 1610 hours, as best he could recall. He agreed that on his case management worksheet he estimated the time of the incident at about 1600 hours, about 20 minutes after Respondent's sign out. Crystal agreed that he was basically saying that Respondent was able to go downstairs, take off his equipment and uniform, put on new clothes, get into a car and drive to the Bronx within 20 minutes.

He agreed that he went to the Cross Bronx Expressway, exited at the Randall Avenue exit, turned left and went under the underpass along Randall Avenue up to East Tremont Avenue. He agreed that he did not use his car to determine a time frame. He did not wait until 4:00 p.m. on a Friday afternoon in the summer to time the drive, nor did his supervisor tell him to do so. Crystal indicated that he did not do these things because, "Based upon the evidence presented to me, it appeared that he had done it..."

Crystal agreed that upon exiting the Cross Bronx Expressway one makes a left to continue on Randall Avenue and that that was the route Person A and Respondent took. He agreed that Person A stated that when she made the left turn, there was traffic in front of her so she made a wide left turn around the congested traffic at the light. He also agreed that she had to try and squeeze back in to go on Randall Avenue and had to get out of the lane she was in. Crystal agreed that that was an aggressive move and that such aggressive moves can lead to confrontations on the roadway. Crystal agreed that at the time of trial, Person A had a suspended license.

Crystal agreed that the streets one would cross going down Randall Avenue are Quincy, Calhoun, Revere and East Tremont Avenues and that of these, the greatest distance is from Revere Avenue to East Tremont Avenue. He also agreed that Person A had said the incident occurred at Quincy and Randall Avenues.

Crystal agreed that Person A said she pulled over to the side of the road and ducked, that when she ducked Person A could not see the cars, and he did not know how long Person A had ducked. Crystal agreed that Randall Avenue might get busy at times. He also agreed that Person A told him that she saw the car make a left turn on East Tremont Avenue. He agreed, after reviewing his report, that she said she saw the license plate number when the

car was on East Tremont Avenue. He agreed that he did not get out of his car to see if one could see a license plate from Quincy Avenue to East Tremont Avenue.

Crystal agreed that it was possible that Person A could have had a dispute with one person and then, when she looked up, saw a similar-looking car and had taken down that license plate number.

On re-direct examination, Crystal noted that he had observed the criminal trial and had seen Respondent's sergeant on the day of the incident, Jeter-Howard, testify. He did not believe she had any recollection of what time Respondent signed out that day or what time Respondent was released from CRV duties that day.

On the issue of the Mercedes, Crystal stated that Person A had given the license plate number that belonged to Respondent to the 911 operator, but the 911 operator entered the wrong license plate number into the system. Both license plate numbers were run at the request of the responding officers and one came up with the Toyota Camry which matched the description given by Person A. He agreed that the Mercedes' license plate number came back as a result of a mistake by the 911 operator.

With regard to his conversation with the ADA about the jurors, the ADA said he indicated that the jurors had also stated that they did not believe Respondent and that they believed something had gone on between Respondent and Person A.

Crystal also clarified that the 911 call was made at 1618 hours and that that time was more accurate than his estimate of 1600 hours.

Person A's Testimony at Respondent's Criminal Trial

Person A is a high school graduate who works at "club promotion" and "freelance real estate." On June 5, 2009, after 4:00 p.m., she was driving from the store to her home

in the Throgs Neck section of the Bronx. She was driving her car, a Honda Fit. She said she was coming off of either the Bruckner or the Cross Bronx Expressway (she noted that she is confused between the two because they are close at that point). She exited at the Randall Avenue exit, got to the green light, and signaled that she wanted to make a left turn. She said:

When I made the left traffic was kind of a little too busy there so I kind of went to the right side of the road where the parked cars were at and waited till I got an opening where I was able to get into traffic again. First car passed me, I couldn't get in, then there was opening. I put signal on and I proceeded with traffic from there...At that time I noticed that the car who allowed me to get into traffic raced up on me real quickly, like drove real quickly, like almost hit me.

She said there was one person in that car and she identified Respondent, in court, as that person. Continuing with her testimony, Person A explained that the driver that had let her in also honked his horn and flashed his lights. Person A denied that she had made an improper driving maneuver because she believed that the other driver had given her the right of way. Describing her initial actions at the time she exited the highway Person A stated:

I made the left. Now there were cars also making a left, so I couldn't stay behind them because then I would be underneath the light and I didn't want to get caught in there when a red light came. So there -- from that lane, I went to where the parked cars were kind of and I proceeded that way and I was able to get into the traffic through there.

Person A said she felt as if she did the right thing so that she would not be in the way of traffic when the light changed. She said Respondent started putting on his high beams and flicking them on and off and honking his horn loudly. Person A said she looked back to

make sure it was not a police car. She said she then rolled down her window and gave him her middle finger. She also was cursing at Respondent.

After she put up her finger at the Respondent, she said, pulled up “real fast” on her side with the cars almost touching. She put her window down and looked to see if she knew the person and if this was some kind of joke. She saw a gun in her face.

Person A described the gun as being black. She described the car as a silver Toyota Camry. She said she thought he was going to kill her and that she was “very scared.”

She said that she had an opportunity to see the driver’s face saying, “Yes, yes. As soon as I looked at the gun when it was in my face, I saw his eyes and his nose.” She had never seen him before this incident.

When she saw the gun in her face she began screaming, “What’s wrong with you, you’re crazy, what’s going on.” Respondent told her not to curse at him, “you fucking bitch.” She said at that point she started “leaning down” in her car to get away from him. She stated, “I started trying to drive off and lean back and forward and look at him and the same time to see which way the gun was pointed and if he was going to stop or jump out. I didn’t know what was going on and he was pushing me toward the parked cars like to make me crash.”

She explained by that by “pushing” she meant steering his car close to hers to make her hit parked cars. She acknowledged that the cars never came in contact. She testified that she was, “Just looking at the gun and I’m cursing at him and I told him, you know, I say, you’ll have to kill me because I’m going to get you, you’re crazy, what’s wrong with you.” She explained that by “get you” she meant call the cops.

Person A said she told Respondent that she would get his license plate number and she sped up her car a little bit. She was able to see the first three letters of his plate. She noted that her daughter was in the back seat of her car and that Respondent said that he would kill all of them. She said his exact words were, "I'll kill all of yous." At that time, she said the gun was pointed at her daughter. At that point, she testified that she "threw the car to the side, parked in real quick and kept ducking down."

Person A said she pulled over and "he stood there for like a couple seconds still pointing the gun and I was just leaning down, squinting my eyes, just hoping I don't hear the gun go off. And when he took off, I looked at the plate and I took the last four numbers of his plate down and called 911 right there."

Person A did not know this person and had no idea at that time what he did for a living. Person A identified a gun as appearing to be the gun that was pointed at her and she identified the tape of her 911 call. She also identified a map of the area of the Bronx where the incident occurred. Person A testified that her daughter who was in the car with her at the time of the incident was born on December 17, 2006, and she remained quiet during the incident.

Once the police arrived, Person A went inside a TD Bank. She did not conduct a canvass with the police. The next time Person A had contact with the police was when she received a phone call from IAB. She was informed by IAB that an investigation was conducted and the suspect was an off-duty cop. Person A then met with IAB personnel and she was shown a picture of the Respondent. Person A said that she recognized the Respondent before the sheet of paper which had the picture of the Respondent, and other people, was turned over. Person A explained that someone was holding up the sheet of

paper but the pictures on the paper were facing away from her, but that because the "light was going through [the paper]" she could identify him because of his eyes, eyebrows and his nose.

On cross-examination, Person A said she lived on [REDACTED]. The ramp of the highway consists of only one lane. She said there was a little traffic that day. She stated that the exit ramp leads to three separate lanes. Out of the three lanes, two are designated for left turns only, and the third is for thru-traffic. On Randall Avenue, there are three lanes on either side of the road. Two lanes are for traffic and the third is reserved for parking. Person A said it was approximately 4:00 p.m. when she turned on to Randall Avenue. She was in the parking lane on Randall Avenue, and waiting to merge back into traffic.

She said the weather was "gloomy" and so it was dark outside on that day. She then got into the traffic lane and saw a car quickly approaching behind her car. She acknowledged there was bumper to bumper traffic. She then looked in her rearview mirror and saw the Toyota emblem on the hood of the car. She stated that she was travelling about "five miles per hour" and that there were other cars behind, in front, and to the side of her. Person A stated that her driver license has been suspended due to some moving violation tickets.

Person A said that the other driver was flashing his headlights and honking his horn at her but not yelling. However, in her interview with BXIU, she said that Respondent was yelling at her.

Person A stated that while Respondent was flashing his headlights, she lowered her window and stuck out her middle finger. She does not recall if she stuck her middle

finger out to the Respondent twice. However, in her interview with BXIU, she said she stuck her middle finger twice. Person A then began cursing in the car. She said Respondent then pulled next to her, rolled down his window, and pointed a gun at her. Person A said she rolled down her window and began cursing at him. She also stated that the gun was pointed at her for three minutes.

She acknowledged that, at one point, Respondent was a “good guy” for letting her into the lane, but then became a “bad guy” for honking his horn and flashing his headlights at her.

Person A stated that while the gun was pointed at her, she was telling him that she was going to get his license plate number. She also stated that her daughter was in a child-seat in the rear and that someone who was looking inside her car would have seen that. She said Respondent said, “Don’t you ever curse at me bitch, you bitch.”

After Respondent drove off, Person A pulled over into a parking spot on the corner of East Tremont and Randall Avenues. She waited for the arrival of the police in front of TD Bank. Once the police arrived, she gave the officer the license plate number of the vehicle. The officer told her that according to the license plate number, the vehicle was a Mercedes, and that she (Person A) had the wrong information.

She said that her daughter was not screaming for the most part, however, she may have cried a little bit. But at her interview with BXIU, Person A said she pulled over because her daughter was screaming and that she wanted to check on her daughter. She said she was about “a foot, foot and a half” away when she observed Respondent with the firearm. In one of her statements to the District Attorney’s office, Person A indicated that her daughter, “became upset and nervous and further observ[ed] her scream and cry.”

She said that Respondent's car blocked her in for two or three blocks. She said she was not crying during the incident, but she did cry afterwards. She also stated she screamed and cursed at Respondent.

Person A stated that on June 8, 2009, she went to the 48 Precinct. She got there around 10:30 p.m. and left at 2:00 or 3:00 a.m. She also took a half hour break in between.

Person A said that when she was shown the photo array, she told the investigator that Respondent did not look exactly like that. She said Respondent had more hair, and that in the picture Respondent was bald. She also stated that, initially, she described the Respondent as a light-skinned male black.

Sergeant Douglass Maresca's Testimony at Respondent's Criminal Trial

Maresca, a member of the Department for 19 years, is assigned to BXIU, where he investigates minor misconduct cases involving off-duty MOS. On June 7, 2009, he was assigned to investigate the incident involving Respondent. Maresca immediately began running a background check on all possible MOS.

Maresca subsequently came across a complaint that was filed by Person A on June 5, 2009. The 45 Precinct Detective Squad initially investigated the complaint and learned that the vehicle Person A described belonged to a police officer. As a result, BXIU got involved. IAB prepared and provided Maresca with a photo array.

Maresca said Respondent was later arrested at his (Maresca) office and Respondent's "black firearm" was given to Maresca by the Respondent's union delegate. According to the Respondent's Department personnel record, he owned a black Glock firearm.

On cross-examination, Maresca stated that on June 7, 2009, at 10:10 p.m., he conducted an interview with Person A regarding the incident. Maresca said Person A was not crying during the interview, rather, she was fairly composed and did not appear to be afraid while Maresca was interviewing her. He said that that the BXIU is not the same as IAB and that the BXIU is in charge of investigating minor misconduct and off-duty cases. He added that it is not unusual for IAB to give him these types of investigations.

After reviewing Respondent's personnel file, Maresca learned that Respondent resided on Winding Lane. Maresca did not recall if Respondent resided on Philip Avenue, in the confines of the 45 Precinct. However, upon review of Respondent's personnel file, Maresca said Respondent did not reside in the confines of the 45 Precinct.

The Respondent was arrested and his firearm was recovered. Maresca said he inspected the firearm to make sure it had not been fired. Maresca acknowledged that, according to the Respondent's personnel file, the Respondent owned a second firearm, a Smith & Wesson, which was not black in color. Maresca stated that on the day of the incident, the Respondent worked from 7:05 a.m. to 3:40 p.m.

Maresca did not recall if Person A brought someone with her on the day of her interview, and she also took a one-hour break during the interview. Further, at approximately 12:15 or 12:20 p.m., Maresca conducted the identification procedure with two pieces of paper. Each piece of paper had six photos on it. The first piece of paper was placed faced down on the table and the second piece of paper was in Maresca's hands. Maresca began reading from the second piece of paper when he was interrupted by Person A then identified the picture of Respondent. He added that Person A's demeanor did not change throughout the entire interview.

Maresca did not recall if he had the 911 tape of Person A's call during her interview. He said he canvassed the scene of the incident for cameras, but found none. The canvass began at the Bruckner [Expressway] and ended at East Tremont Avenue.

Maresca stated that he did not show Respondent's firearm to Person A however, Maresca said that he may have asked Person A to describe the firearm and he also showed Person A the difference between a revolver and a pistol.

Maresca said he did not speak with any of the officers who responded to the incident on June 5, 2009.

On redirect examination, Maresca said that Person A described the firearm that was used in the incident as a pistol.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a member of the Department for eight years, is assigned to the 28 Precinct. On June 5, 2009, he was working from 7:05 a.m. to 3:40 p.m., and he was assigned as the sergeant's driver. At the completion of his tour, he signed out in uniform. He added that he has always signed out in uniform. After signing out in uniform, Respondent goes to the male locker room located in the basement, and changes in to civilian attire. He said it takes him approximately 15 minutes to get changed. He leaves the precinct between 4:00 p.m. and 4:05 p.m., but no later than 4:10 p.m.

The 28 Precinct is located on West 123 Street and Eighth Avenue. His commute home involves going over the Madison Avenue Bridge into the Bronx, then taking the

Major Deegan, Bruckner and Cross Bronx Expressways. He then takes Exit 11, Randall Avenue. From the exit Respondent said he:

"come[s] to a light, you are at Randall Avenue, I make a left onto Randall Avenue under the underpass. Then there is also another light you can get stopped at on the opposite of the underpass when you are on Randall. Then I make -- I follow straight onto Randall Avenue until I get to [REDACTED], which is third block from the underpass. Make a left onto [REDACTED] and I live on [REDACTED].

Respondent lives between [REDACTED] and usually parked his vehicle on [REDACTED]. He said he has been taking this route for a long time and typically walks into his house between 4:30 p.m. and 4:35 p.m. He added that there is usually more traffic during the summer months.

Respondent denied having been involved in any dispute with Person A on June 5, 2009. He added that he also testified during his criminal trial and that the jury returned a "not guilty" verdict regarding the incident.

On cross-examination, Respondent stated that it sometimes takes him a while to find parking in his neighborhood. He said he parks his vehicle on one of three streets: Philip, Revere or Edison Avenues. At his criminal trial, Respondent learned that Person A lived on Edison [Avenue]. He acknowledged that it may have been possible that he had, prior to June 5, 2009, parked on Edison Avenue.

Respondent agreed that, although he was at his command after 3:40 p.m. on June 5, 2009, he did not ask anyone to come forward and provide evidence supporting that. In 2009, he had been a member of the Department for six years, and in those six years, he always signed out in uniform and never left his command early without taking "lost time."

Respondent acknowledged that he was assigned to CRV, and that he was released from CRV at least 30 minutes before his end of tour to give him ample time to get back to his precinct. He said that he was assigned as the sergeant's operator and drove to other posts to check on officers. Respondent said he was not required to document the time he was dismissed from CRV in his Activity Log. He also acknowledged that he carries an off-duty Glock while off-duty.

On redirect examination, Respondent agreed that the desk officer could have confirmed that he signed out at 3:40 p.m.

FINDINGS AND ANALYSIS

The Department's case is straightforward, simple and based on testimony given by Person A at Respondent's criminal trial (DX 1, pages 23 to 89). On June 5, 2009, while driving in the Bronx, Person A, rather than waiting in the proper lane to make a turn, drove her car into the parking lane, went around other cars, and cut into the turn lane in front of Respondent's car. Respondent became irate, began honking his horn, flashing his lights and driving up close to the rear of her car. Person A opened her window and gave him "the middle finger" while cursing at him. Respondent then brought his car next to hers, rolled down the window and pointed a gun at her and at her daughter who was in the back seat.

Person A did not testify at this trial. Evidence of Person A's version of events is certainly hearsay but it is not a simple hearsay declaration, it is a transcript of testimony given under oath at a criminal proceeding involving the same issues as this disciplinary matter. Respondent was represented at that proceeding by an attorney who confronted Person A through cross-examination. Moreover, there is significant corroboration of Person A's claims.

It is undisputed that Person A called 911 (DX 2 and 2A, tape recording and transcript of call). The tone of her voice and the substance of what she said in that 911 call indicate that she had just been subject to the emotional experience of having a gun pointed at her and her child as claimed in her testimony.

She said she would wait for a police response at East Tremont and Randall Avenues, which she did as confirmed by Jackson, who arrived a few minutes after that call. Jackson described her as being “very upset” and noted that she was crying. What she told Jackson was essentially what she said in her testimony at the criminal trial; that a black male, late 20s to early 30s in age, pointed a gun at her and her child.¹

Person A also provided a license plate number and description of the car on the 911 tape. The description of the car was “a Toyota, I don’t even know if it was a Camry or what. It’s a silver car.” Person A was certain of the first three letters of the license plate number, and said the four numbers that followed were “7349 or 6349.” She also said that she had announced she was trying to obtain the license number and that, “He wouldn’t let me get the plate.” Respondent’s car, bearing the second license plate number given by Person A, is a silver Toyota Camry.

This is strong corroboration of the accuracy of Person A’s testimony and of her identification of Respondent’s vehicle. Respondent denies ever knowing her before this incident, a fact which makes it even clearer that Person A could only have obtained this information during the incident.

There was also testimony about the identification of Respondent in a photo array (DX 3). While testimony about that photo array is hearsay, the array is clearly not

¹ According to Department records Respondent’s date of birth is [REDACTED], thus he was 28 years of age on the date of the incident.

suggestive as all six photographs are of black males of about the same age, with shaven or bald heads and wearing similar clothing. Respondent's photograph is circled and there is no question that Person A identified him in this photo array on June 8, 2009, several days after the incident.

This is obviously strong identification evidence. Additionally, because there were no other contacts between Person A and Respondent, this is strong evidence that the encounter upon which this identification is based occurred during the incident on June 5, 2009.

Lastly, there is the gun. Person A described the gun which was pointed at her as black in color with squared features. The description she gave of the gun matched that of Respondent's off-duty weapon.²

While the case against Respondent appears to be extremely strong, Respondent has maintained his innocence. He has denied any contact whatsoever with Person A and denied that any incident occurred between him and her. The situation he described is nothing less than harrowing. Essentially, he is claiming that out of the blue he found himself charged with criminal and departmental misconduct based on events that simply did not occur.

One line of defense pursued by Respondent was the claim that Department investigators ignored exculpatory evidence. During cross-examination of Crystal and during his closing argument, counsel for Respondent noted that the first time the license plate number was called in, it came back to a Mercedes and he chastised Crystal for not further investigating that Mercedes. On re-direct examination, it was learned that license

During the trial Person A identified Respondent's off-duty weapon as appearing to be the gun that
was
pointed at her.

plate number that came back to the Mercedes was the result of a mistake by the 911 operator. While this Court shares the concern that a failure to follow up on possible exculpatory leads can lead to an injustice, there is no reason to believe that following up on a known error makes any sense at all.³ Other claims made by counsel for Respondent about alleged failures to investigate are similarly without merit.

Another line of defense urged by counsel for Respondent involves the time line. Respondent, he asserts, signed out of his command, in uniform, at 3:40 p.m. He has asserted that Respondent could not change and then get from his command, at West 123 Street and Eighth Avenue in Manhattan, to the location in the Bronx where the incident occurred at 4:00 p.m., which is when he contends it had to have happened.

There are several problems with this line of argument. The first has to do with the time of the incident. Testimony at trial established that the 911 call was made at 4:18 p.m. The context of that conversation indicates that the call was made immediately after the incident. The time of the incident was clearly closer to 4:15 p.m. than to 4:00 p.m.

Respondent's testimony and the roll call where he signed out (CX 1) certainly comprise some evidence that Respondent signed out at 3:40 p.m. or but it is hardly strong proof of that fact.

There is no independent corroboration of the accuracy of the handwritten roll call entry made by Respondent and there is ample testimony that Respondent would have finished his assignment for the day and been back at the precinct well before sign out time. Further, there is only Respondent's testimony that he was in uniform at the time he signed out.

³ Respondent's correct plate number was called into 911 by Person A and is on the 911 tape.

Consequently, there is every reason to believe that he was on the scene of the incident at Randall Avenue at about 4:15 p.m. It is not known whether this occurred because Respondent left his command early or because he was able to travel quickly or a combination of both, but there is ample persuasive evidence that he was on the scene, which is far stronger than any claim by Respondent that he could not have been there at that time.

Counsel for Respondent, noting the large number of Camrys on the road, argued that Person A may have seen Respondent go by and mistaken Respondent's Camry for the one used by the person who confronted her. This argument, of course, is in conflict with his previous argument that there was not enough time for Respondent to get from his command to the location of the incident on Randall Avenue at the time it occurred. But the argument of a mistake does bear consideration.

There are problems with this theory. The first is that there is evidence that Respondent's vehicle had tinted windows. If Respondent was just driving by, Person A would likely not have been able to see him and make the kind of positive identification she made. Additionally, it is unlikely that she would have been confronted with a pistol that exactly resembled Respondent's off-duty firearm.

Person A's testimony, on the other hand is clear. She said she saw Respondent when he came alongside her and rolled down the window. She also obtained the license plate number in two segments because, she said, Respondent was trying to prevent her from getting the number. Again, the credible evidence indicates that Person A knew exactly what she was talking about and did not mistake Respondent or his car for someone else.

Counsel for Respondent also noted that Respondent was acquitted in the criminal trial on these issues. This Court takes note of that acquittal but also notes that this tribunal is not bound by that jury finding. The double-hearsay statements about what an unknown number of jurors may have told an ADA about the reason for their verdict is also unpersuasive. Such statements are unsworn and often have little probative value as they may be motivated by a desire to assuage the feelings of an ADA who just lost a case. Additionally, the negative statements about Person A were matched by negative statements about Respondent.

Looking at the evidence as a whole, this Court finds Person A's testimony to be credible and corroborated by other reliable evidence. Further, there seems to be no reasonable alternative set of facts consistent with Respondent's innocence.

Having determined the facts, it is now necessary to apply them to the five specifications in this case.

Specification No. 1 alleges that Respondent, "while off-duty, on or about June 5, 2009, in the vicinity of Randall Avenue and East Tremont Avenue, within the confines of the 45th Precinct, Bronx County, did intentionally place or attempt to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm. The alleged conduct here constitutes the crime of Menacing in the Second Degree. The credible facts are that the Respondent pointed his off-duty pistol at Person A and thus the Respondent is found Guilty of this specification.

Specification No. 4 alleges that at the same time and location Respondent, “did intentionally place or attempt to place another person in fear of death, imminent serious physical injury or physical injury.” This conduct constitutes the crime of Menacing in the Third Degree. This is a lesser included crime of Menacing in the Second Degree which, in a criminal trial, is subsumed in the finding on the higher crime. This is because commission of the higher crime also includes commission of the lesser crime. This being an administrative proceeding, there is no reason why Respondent cannot be found guilty of both and as a result Respondent is found Guilty of this specification.

Specification No. 2 alleges that at the same time and location Respondent, “did possess any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another. Even though Respondent lawfully possessed his off-duty firearm, the moment he used it in an unlawful manner he committed the crime of Criminal Possession of a Weapon as charged and the Respondent is found Guilty of this specification.

Specification No. 3 alleges that at the same time and location Respondent, “did knowingly act in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old.” This crime, Endangering the Welfare of a Child, was potentially committed in two ways. First, Person A testified that Respondent pointed the gun at her three-year-old child, seated in the back seat of the car and said that he would kill them. This certainly endangered the welfare of that child.

The second way this crime could have been committed is that Respondent pointed the weapon at Person A in the presence of the child. Person A was asked about the child's reaction and did not describe anything that would indicate that the child understood the danger. As a consequence, the crime was not established by that conduct. However, as noted, there is evidence that Respondent pointed the gun at the child, thereby endangering her and Respondent is found Guilty of this specification.

Specification No. 5 alleges that at the same time and location Respondent, "with intent to harass, annoy or alarm another person, did strike, shove, kick or otherwise subject such other person to physical contact, or attempts or threatens to do the same." The conduct set forth in this specification constitutes the offense of Harassment, which is not a crime. In light of the findings in the above specifications this specification should be dismissed.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 1, 2003. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found guilty of several specifications resulting from his conduct in pointing a firearm at another person while off-duty without justification. The Department has recommended a penalty involving the loss of 40 days (30 suspension days previously served plus 10 vacation days). There is ample precedent on this issue and

penalties in similar cases have always involved a period of dismissal probation along with a loss of vacation and/or suspension days (see Disciplinary Case No. 82581/07 approved March 18, 2010, Disciplinary Case No. 83391/07 approved October 20, 2010 and Disciplinary Case No. 76675/01 approved July 22, 2002). The most recent of these cases (Disciplinary Case No. 83391/07) is the most similar to the instant case in that it involved an officer pointing a firearm at another driver after a road rage incident. The penalty in that case was 16 suspension days previously served plus 14 vacation days for a total of 30 days, in addition to dismissal probation.

As a result, it is recommended that the Respondent be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code of New York City, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further hearings. It is further recommended that he forfeit the 30 days he served on pretrial suspension.

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MICHAEL GALLOW
TAX REGISTRY NO. 932681
DISCIPLINARY CASE NO. 85430/09

In 2010, the Respondent received an overall rating of 4.0 "Highly Competent" on his annual performance evaluation. He was rated 3.5 "Highly Competent/Competent" in 2009 and 2.5 "Competent/Low" in 2007. He has been awarded one medal for Meritorious Police Duty. [REDACTED] Based on his overall record, he was placed on Level II Discipline Monitoring in August 2009.

The Respondent has been the subject of one prior disciplinary adjudication. In 2005, he forfeited 22 vacation days after trial for failing to properly conduct an investigation and take possession of found property during a targeted integrity test. He also pled guilty to an act of courtesy.

For your consideration.



Martin G. Karopkin
Deputy Commissioner – Trials